

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET TV-143199
Against)	
)	ORDER 01
GUS & JACK MOVING COMPANY,)	
LLC)	INITIAL ORDER DENYING
)	MITIGATION
in the amount of \$1,900)	
.....)	

BACKGROUND

- 1 On September 10, 2014, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$1,900 (Penalty Assessment) against Gus & Jack Moving Company, LLC (Gus & Jack Moving or Company) for two violations of Washington Administrative Code (WAC) 480-15-560, which adopts by reference 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance, and 17 violations of WAC 480-15-570, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications.
- 2 On September 17, 2014, Gus & Jack Moving filed a request for hearing, contesting the violations and claiming the Company had met all but the paperwork requirements of the rules. The Company also claimed it was unaware certain records must be kept.
- 3 The Commission conducted a brief adjudicative proceeding on November 6, 2014, before Administrative Law Judge Rayne Pearson. The Company ultimately stipulated to the violations, which limited the scope of the hearing to potential mitigating factors presented through the testimony of company owner Ghassan “Gus” Mansour.
- 4 Julian Beattie, Assistant Attorney General, Olympia, represents Commission Staff (Staff). Gus Mansour, Owner, Lynwood, represents Gus & Jack Moving.

DISCUSSION AND DECISION

- 5 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during

safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³ The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.⁴ The Penalty Assessment cited 35 critical violations in three categories. We address each category in turn, below.

WAC 480-15-560, 49 C.F.R. Part 396.11(a)

- 6 **Discussion.** WAC 480-15-560, 49 C.F.R. Part 396.11(a) requires drivers to complete a vehicle inspection report (DVIR) at the end of his or her shift each day a vehicle is used. The report includes an 11-item checklist that identifies any defects that could affect safe operation of the vehicle. The Penalty Assessment cited 16 violations of WAC 480-15-560 because the Company failed to prepare DVIRs on any of the 16 days in July when the Company operated its vehicles. Mr. Mansour testified that he had no idea drivers were expected to complete DVIRs, but that his vehicles are routinely serviced by a mechanic.

- 7 Staff presented evidence and testimony that Mr. Mansour received an onsite technical assistance visit from Staff in 2012⁵ and attended the Commission’s household goods carrier training in 2013.⁶ On both occasions, Mr. Mansour was provided with a copy of the Commission’s publication, “Your Guide to Achieving a Satisfactory Safety Record,” which explains the DVIR requirement, and provides a detailed description of the information the reports must contain.

¹ See RCW 80.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶19.

⁵ Exh. DP-1.

⁶ Exh. DP-2.

8 **Decision.** Here, the Commission assessed a \$100 penalty for 16 violations of WAC 480-15-560. Because each violation was eligible for a \$100 penalty, the Company could have been penalized \$1,600 in this category alone. The Commission mitigated the amount in the Penalty Assessment, however, because these were first-time violations. Accordingly, Staff recommends no further mitigation. We agree with Staff and decline to mitigate the penalty any further. The Company received technical assistance related to DVIRs on at least two occasions, and was aware that its operations should mirror those outlined in “Your Guide to Achieving a Satisfactory Safety Record.” Moreover, the Company did not introduce any new information at hearing that would support further mitigation.

WAC 480-15-560, 49 C.F.R. 396.17(a)

9 **Discussion.** WAC 480-15-560, 49 C.F.R. 396.17(a) requires commercial vehicles to be inspected annually by a certified mechanic who completes and signs a required form attesting to the condition of the vehicle. The Penalty Assessment cited two violations of WAC 480-15-560 for failing to have either of the Company’s two vehicles properly inspected in the 12 months prior to July 2014. Mr. Mansour testified that he was not aware of this requirement, but that his vehicles are routinely checked by a mechanic.

10 Staff testified that annual vehicle inspections must be performed by certified mechanics, who must complete the required form.

11 **Decision.** Here, the Commission assessed a \$100 penalty for two violations that were eligible for penalties of \$100 each, or \$200. Because these were first-time violations, the Commission mitigated the amount in the Penalty Assessment; Staff therefore recommends no further mitigation. We agree with Staff and decline to mitigate the penalty any further. The Company received technical assistance related to vehicle inspections on at least two occasions, and failed to introduce any new information at hearing that would support further mitigation.

WAC 480-15-570, C.F.R. Part 391.45(a)

12 **Discussion.** WAC 480-15-570, C.F.R. Part 391.45(a) requires drivers to be medically examined and certified annually by a qualified health professional. The Penalty Assessment cited 17 violations of WAC 480-15-570 because Mr. Mansour drove uncertified on 17 days in July 2014. Mr. Mansour testified that although he was

aware of this requirement, he had difficulty finding a physician who was able to perform the exam.

13 **Decision.** Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. Mr. Mansour admitted that he knew about this requirement, but failed to obtain the necessary certification. Mr. Mansour also explained that the Company has since implemented a compliance plan to prevent future violations.

14 While we appreciate the Company's assurances of future compliance, medical certification is a fundamental requirement that warrants penalties for a first-time offense, and a "per violation" penalty is appropriate because these violations are considered critical to safe operations. The Company did not introduce any new information at hearing other than admitting it was aware of the requirement but failed to meet it. We therefore find the penalty to be an appropriate deterrent for repeat violations, and deny the Company's request for mitigation. The Company may, however, work with Staff to establish mutually agreeable payment arrangements to decrease the financial impact of the penalty.

FINDINGS AND CONCLUSIONS

- 15 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 16 (2) Gus & Jack Moving is a household goods company subject to Commission regulation.
- 17 (3) Gus & Jack Moving violated WAC 480-15-560, which adopts by reference 49 C.F.R. Part 396.11(a), by failing to require its driver to complete driver vehicle inspection reports on 16 occasions.
- 18 (4) Gus & Jack Moving should be penalized \$100 for one violation of WAC 480-15-560, which adopts by reference 49 C.F.R. Part 396.11(a).

- 19 (5) Gus & Jack Moving violated WAC 480-15-560, which adopts by reference 49 C.F.R. 396.17(a), by failing to have its two vehicles inspected annually by a certified mechanic.
- 20 (6) Gus & Jack Moving should be penalized \$100 for one violation of WAC 480-15-560, which adopts by reference 49 C.F.R. 396.17(a).
- 21 (7) Gus & Jack Moving violated WAC 480-15-570, which adopts by reference C.F.R. Part 391.45(a), by failing to ensure its driver was medically examined and certified on 17 occasions
- 22 (8) Gus & Jack Moving should be penalized \$1,700 for 17 violations of WAC 480-15-570, which adopts by reference C.F.R. Part 391.45(a).

ORDER

THE COMMISSION ORDERS That

- 23 (1) The request of Gus & Jack Moving Company, LLC for mitigation of the \$1,900 penalty is DENIED.
- 24 (2) Gus & Jack Moving Company, LLC must either pay the penalty or file jointly with Staff a proposed payment plan no later than November 26, 2014.

DATED at Olympia, Washington, and effective November 14, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
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